

~~Conf~~ file S-3394



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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

S. 3394

FROM: OLC 7D35	EXTENSION	NO.
	DATE 5/2/74	

TO: (Officer designation, room number, and building)	DATE		OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
	RECEIVED	FORWARDED		
1.  DDO				<p>Attached is Administration's bill, S. 3394, amending the Foreign Assistance Act of 1961.</p> <p>Note section 8 authorizes transfer of funding for military assistance to Laos from MASF to MAP for FY 1975.</p> <p> Assistant Legislative Counsel</p>
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April 29, 1974

S 6413

inated less than 10 years prior to such date may be withheld from the public pursuant to the policy of this Act or to section 552(b) (1) of title 5, United States Code, unless an entry meeting the requirements of section 6(c) has been made with respect to such document or other matter.

(b) After the effective date of this Act, no document or other matter which was originated 10 years or more prior to such date may be withheld from the public pursuant to the policy of this Act or to section 552(b) (1) of title 5, United States Code, unless the Register makes an entry meeting the requirements of section 6(c) with respect to such document or other matter and immediately notifies the Joint Committee of such entry.

#### AUTHORIZATION

SEC. 8. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

#### EFFECTIVE DATE

SEC. 9. This Act shall take effect 180 days after the date of its enactment.

Mr. JAVITS. Mr. President, I am pleased to join today with Senator MUSKIE in introducing the Government Secrecy Control Act.

The bill we introduce today addresses an issue of extraordinary importance to the American people—not only in the context of the Watergate affair, but in the long, historical context of the role of the Congress in exercising its constitutional responsibilities respecting the national defense and security policies of the United States.

Senator MUSKIE and I, and other Members of the Senate have sought throughout this Congress to restore the separation of powers by reinforcing the power and reaccepting the responsibility of the legislative branch in a wide variety of policy areas.

We have acted in the face of a pattern of conduct by Presidents, since 1932, the result of which has been a dangerous concentration of power in the Presidency. The accumulation and exercise of such power is a direct challenge to the basic constitutional principles of the separation and balance of powers between the three coordinate branches of Government.

We have acted already on the war powers issue, on budget control, on impoundment and on executive privilege—to restore to the representatives of the American people the authority which has been drained from them. In introducing this bill today, we act again to achieve this objective.

A national security classification system is necessary to protect our defense and to enable the executive department to carry out its foreign policy. However, the nature of that system, its administration and the exercise of classification authority must be the object of the most careful scrutiny to assure that fundamental principles of our democracy are not subverted. Maintaining the balance between protecting our national security and providing to the American public the information which it must have to fulfill its obligations under the democratic charter will not be easy.

I believe that action is long overdue in redefining the problem, questioning the basic assumptions and establishing that critical balance. Our bill is a starting point for what I know will be a most

careful examination of this issue in Senator MUSKIE's Subcommittee on Inter-governmental Relations.

The current classification system is costly, inefficient and troublesome. It encourages large scale overclassification, a practice which in turn stimulates security laxness and jeopardizes the protection of material deserving national security classification. I think it well for us to recall Justice Potter Stewart's opinion in the "Pentagon Papers" case wherein he stated:

That the hallmark of a truly effective internal security system would be maximum possible disclosure, recognizing that secrecy can best be preserved only where credibility is truly maintained.

According to some estimates, there may be 20 million classified papers currently held in the Federal Government, of which a very large percentage should not be classified at all. They are thousands upon thousands of employees who exercise the original authority to classify documents. Current practice sometimes tolerates classification of history, newspaper clippings and principles of nature.

Mr. President, steps have been taken in this administration to question and reform classification practices. Under Executive Order 11652 issued by President Nixon in 1972, each agency originating classified documents must index them and have its classification practices reviewed by the Interagency Classification Review Committee. There is also underway in the Department of Defense a formal evaluation of information policies as they actually exist and a stated goal of downgrading many documents through more realistic security classification guides.

Under our proposal, we seek to facilitate this process and to establish a vehicle by which Congress can monitor classification practices, review actions of the executive branch departments and agencies, and order the declassification of classified information. The new Joint Committee on Government Secrecy created by our bill could go to court to enforce its subpoenas if necessary.

Of equal importance, the committee would be required to develop procedures for congressional handling of classified information. I believe that the committees of the Congress must develop such precise rules and standards for their own employees.

Mr. President, this bill will enable us to lay the groundwork for a more rational national security classification system as well as to restore the eroded power of the Congress in yet another important area. Most importantly it will make the operations of the Federal Government more open and credible to our people.

By Mr. SPARKMAN (by request):  
S. 3394. A bill to amend the Foreign Assistance Act of 1961, and for other purposes. Referred to the Committee on Foreign Relations.

Mr. SPARKMAN. Mr. President, by request, I introduce for appropriate reference a bill to amend the Foreign Assistance Act of 1961 and for other purposes.

The bill has been requested by the

President of the United States and I am introducing it in order that there may be a specific bill to which Members of the Senate and the public may direct their attention and comments.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when it is considered by the Committee on Foreign Relations.

I ask unanimous consent that the bill be printed in the Record at this point, together with the section-by-section analysis.

There being no objection, the bill and analysis were ordered to be printed in the Record, as follows:

S. 3394

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Foreign Assistance Act of 1974".

#### TITLE I

##### MIDDLE EAST PEACE

SEC. 2. The Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new part:

#### "PART VI

"SEC. 901. STATEMENT OF POLICY.—The Congress recognizes that a peaceful and lasting resolution of the divisive issues that have contributed to tension and conflict between nations in the Middle East is essential to the security of the United States and the cause of world peace. The Congress declares and finds that the United States can and should play a constructive role in securing a just and durable peace in the Middle East by facilitating increased understanding between the Arab nations and Israel, and by assisting the nations in the area in their efforts to achieve economic progress and political stability, which are the essential foundations for a just and durable peace. It is the sense of Congress that United States assistance programs in the Middle East should be designed to promote mutual respect and security among the nations in the area and to foster a climate conducive to increased economic development, thereby contributing to a community of free, secure and prospering nations in the Middle East.

"SEC. 902. GENERAL AUTHORITY.—The President is authorized to furnish, on such terms and conditions as he may determine, assistance authorized by this Act and credits and guarantees authorized by the Foreign Military Sales Act in order to carry out the purposes of this part.

"SEC. 903. ALLOCATIONS.—(a) Of the funds appropriated to carry out chapter 2 of part II of this Act, during the fiscal year 1975 up to \$100,000,000 may be made available for military assistance in the Middle East.

"(b) Of the funds appropriated to carry out chapter 4 of part II of this Act, during the fiscal year 1975 up to \$377,500,000 may be made available for security supporting assistance in the Middle East.

"(c) Of the aggregate ceiling on credits and guarantees established by section 31(b) of the Foreign Military Sales Act, during the fiscal year 1975 up to \$330,000,000 shall be available for countries in the Middle East.

"SEC. 904. (a) SPECIAL REQUIREMENTS FUND.—

There are authorized to be appropriated to the President for the fiscal year 1975 not to exceed \$100,000,000 to meet special requirements arising from time to time in carrying out the purposes of this part, in addition to funds otherwise available for such purposes. The funds authorized to be appropriated by this section shall be available for use by the President for assistance authorized by this Act in accordance with the provisions applicable to the furnishing

April 29, 1974

of such assistance. Such funds are authorized to remain available until expended.

"(b) The President shall keep the Committee on Foreign Relations and the Committee on Appropriations of the Senate and the Speaker of the House of Representatives currently informed on the programming and obligation of funds under subsection (a)."

Sac. 3. Section 620(p) of the Foreign Assistance Act of 1961 is repealed.

#### TITLE II

##### INDOCHINA POSTWAR RECONSTRUCTION

Sac. 4. Section 802 of the Foreign Assistance Act of 1961 is amended to read as follows:

"Sec. 802. AUTHORIZATION.—There are authorized to be appropriated to the President to furnish assistance for relief and reconstruction of South Vietnam, Cambodia and Laos as authorized by this part, in addition to funds otherwise available for such purposes for the fiscal year 1974 not to exceed \$54,000,000, and for the fiscal year 1975 not to exceed \$939,800,000 which amounts are authorized to remain available until expended."

#### TITLE III

##### FOREIGN ASSISTANCE ACT AMENDMENTS DEVELOPMENT ASSISTANCE AUTHORIZATIONS

Sac. 5. Section 103 of the Foreign Assistance Act of 1961 is amended by striking out the words "\$291,000,000 for each of the fiscal years 1974 and 1975" and inserting in lieu thereof "\$291,000,000 for the fiscal year 1974, and \$546,300,000 for the fiscal year 1975".

##### HOUSING GUARANTIES

Sac. 6. Section 223(1) of the Foreign Assistance Act of 1961 is amended by striking out "June 30, 1975" and inserting in lieu thereof "June 30, 1976".

##### INTERNATIONAL ORGANIZATION AND PROGRAMS

Sac. 7. Section 302(a) of the Foreign Assistance Act of 1961 is amended by striking out the words "for the fiscal year 1975, \$150,000,000" and inserting in lieu thereof "for the fiscal year 1975, \$163,900,000".

##### MILITARY ASSISTANCE

Sac. 8. (a) Chapter 2 of Part II of the Foreign Assistance Act of 1961 is amended as follows:

(1) In section 504(a), strike out "\$512,500,000 for the fiscal year 1974" and insert in lieu thereof "\$985,000,000 for the fiscal year 1975".

(2) In section 506(a)—

(A) Strike out "the fiscal year 1974" in each place it appears and insert in lieu thereof "the fiscal year 1975"; and

(B) At the end of subsection (a) add the following sentence: "Orders not exceeding \$250,000,000 in value may be issued under this subsection, upon such determination, during the period of any succeeding fiscal year that precedes the enactment of legislation authorizing appropriations for military assistance for that fiscal year."

(3) After section 506, add the following new section:

"Sec. 507. LIMITATION ON THE GRANT OF EXCESS DEFENSE ARTICLES.—

"(a) Except as provided in section 506, the aggregate value of excess defense articles ordered during the fiscal year 1975 under this chapter for foreign countries and international organizations shall not exceed \$150,000,000.

"(b) The Secretary of State shall promptly and fully inform the Speaker of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate of each decision to furnish on a grant basis to any country excess defense articles which are major weapons systems to the extent such major weapons system was not included in the presentation material previously submitted to the Congress. Additionally, the Secretary of State shall also submit a quarterly report to the

Congress listing by country the total value of all deliveries of excess defense articles, disclosing both the aggregate original acquisition cost and the aggregate value at the time of delivery."

(b) Section 655(c) of the Foreign Assistance Act of 1961 shall not apply to assistance authorized under any provision of law for the fiscal year 1975.

(c) Section 8 of the Act entitled "An Act to amend the Foreign Military Sales Act, and for other purposes", approved January 12, 1971 (84 Stat. 2053), as amended, is repealed, effective July 1, 1974.

##### SECURITY SUPPORTING ASSISTANCE

Sac. 9. Section 532 of the Foreign Assistance Act of 1961 is amended by striking out "for the fiscal year 1974 not to exceed \$125,000,000, of which not less than \$50,000,000 shall be available solely for Israel" and inserting in lieu thereof "for the fiscal year 1975 not to exceed \$885,500,000".

#### TITLE IV

##### FOREIGN MILITARY SALES ACT AMENDMENTS

Sac. 10. (a) The Foreign Military Sales Act is amended as follows:

(1) Section 3(d) is amended to read as follows:

"(d) A country shall remain ineligible in accordance with subsection (c) of this section until such time as the President determines that such violation has ceased, that the country concerned has given assurances satisfactory to the President that such violation will not recur, and that, if such violation involved the transfer of sophisticated weapons without the consent of the President, such weapons have been returned to the country concerned."

(2) In section 24(a) and section 24(b) the parenthetical phrase in each is amended to read "(excluding United States Government agencies other than the Federal Financing Bank)".

(3) Section 24(c) is amended to read as follows:

"(c) Funds made available to carry out this Act shall be obligated in an amount equal to 25 per centum of the principal amount of contractual liability related to any guaranty issued prior to July 1, 1974 under this section. Funds made available to carry out this Act shall be obligated in an amount equal to 10 per centum of the principal amount of contractual liability related to any guaranty issued after June 30, 1974 under this section. All the funds so obligated shall constitute a single reserve for the payment of claims under such guaranties, and only such of the funds in the reserve as may be in excess from time to time of the total principal amount of contractual liability related to all outstanding guaranties under this section shall be deobligated and transferred to the general fund of the Treasury. Any guaranties issued hereunder shall be backed by the full faith and credit of the United States."

(4) In section 31—

(A) Subsection (a) is amended by striking out "\$325,000,000 for fiscal year 1974" and inserting in lieu thereof "\$555,000,000 for the fiscal year 1975"; and

(B) Subsection (b) is amended by striking out "\$730,000,000 for the fiscal year 1974, of which amount not less than \$300,000,000 shall be available to Israel only" and inserting in lieu thereof "\$877,500,000 for the fiscal year 1975."

(5) In section 33—

(A) subsection (a) is repealed;

(B) subsection (b) is redesignated as subsection (a); and

(C) a new subsection (b) is added as follows:

"(b) The President may waive the limitations of this section when he determines it to be important to the security of the United States and promptly so reports to the

Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate."

(b) Obligations initially charged against appropriations made available for purposes authorized by section 31(a) of the Foreign Military Sales Act after June 30, 1974, and prior to the enactment of the amendment of that Act by paragraph (3) of subsection (a) of this section in an amount equal to 25 per centum of the principal amount of contractual liability related to guaranties issued pursuant to section 24(a) of that Act shall be adjusted to reflect such amendment with proper credit to the appropriations made available in the fiscal year 1975 to carry out that Act.

#### SECTION-BY-SECTION ANALYSIS OF THE PROPOSED FOREIGN ASSISTANCE ACT OF 1974

##### I. INTRODUCTION

The proposed Foreign Assistance Act of 1974 (hereinafter referred to as "the Bill") is an amendment to the Foreign Assistance Act of 1961, as amended (hereinafter referred to as "the Act"). The Bill also amends the Foreign Military Sales Act (hereinafter referred to as "the FMSA"). The major purpose of the bill is to provide authorization for appropriations for activities under the Act and the FMSA at the levels requested for fiscal year 1975 in the President's budget. The principal substantive amendment is the creation of a new part VI to the Act, providing authority and funding authorization for assistance to promote peace in the Middle East.

##### II. PROVISIONS OF THE BILL

###### Title I. Middle East Peace

Section 2. This section adds a new part VI to the Act, consisting of four sections, as follows:

Section 901 sets forth a statement of policy, emphasizing that a peaceful settlement in the Middle East is essential to the security of the United States and world peace and that assistance programs in the Middle East can contribute to such a peaceful settlement. The section provides that United States assistance in the area should facilitate understanding between the Arab nations and Israel, support efforts to achieve economic progress and political stability, promote mutual respect and security, foster increased economic development, and thereby contribute to a just and durable peace in the Middle East and a community of free, secure and prospering nations in the area.

Section 902 authorizes the President to furnish assistance under the Act and credits and guaranties under the FMSA to carry out the purposes described in section 901. Such assistance, credits and guaranties are to be provided within the framework of existing law. No additional or special authority is provided by this section for Middle East programs.

Section 903 indicates the levels of military assistance and security supporting assistance appropriations intended for Middle East programs. The \$100,000,000 for MAP is for Jordan while the \$377,500,000 in supporting assistance is for Israel, Jordan and Egypt. The \$330,000,000 in FMS credits and guaranties is for Israel and Jordan. This section does not authorize appropriations in addition to the amounts contained in the regular authorizations for military assistance, security supporting assistance and FMS credits and guaranties contained in the Bill.

Section 904 establishes a Special Requirements Fund of \$100,000,000 for fiscal year 1975 to meet needs which cannot be foreseen in the normal budgeting, authorization and appropriation cycle, but that are important to the efforts by the United States to help achieve peace in the Middle East. The section contains a requirement that the Congress be currently informed on the programming and obligation of funds from the

Special Requirements Fund. The requirement is intended to provide for a complete and timely explanation by the Executive Branch as to the way in which the Special Requirements Fund is used, including wherever possible consultation with the Congress in advance of substantial obligations from this fund.

Section 3. This section repeals section 620 (p) of the Act, which prohibits assistance to Egypt absent findings by the President that such assistance is in the national interest. The fiscal year 1975 foreign assistance program includes assistance for Egypt. If the Congress agrees that such assistance is in the national interest by authorizing the Administration's program, the requirement of section 620(p) for a further finding by the President would be redundant.

#### *Title II. Indochina Postwar Reconstruction*

Section 4. This section amends section 802 of the Act to authorize \$939,800,000 for Indochina Postwar Reconstruction assistance for South Vietnam, Cambodia and Laos for fiscal year 1975. This authorization will provide funding necessary to provide essential support for the war-torn economies of South Vietnam, Cambodia and Laos, as well as to begin the expansion of capacity for agricultural and industrial production in South Vietnam.

#### *Title III. Foreign Assistance Act Amendments*

##### *Part I*

##### *Chapter 1—Development assistance*

Section 5. Food and Nutrition.—This section amends section 103 of the Act which authorizes funds to alleviate starvation, hunger and malnutrition, and to provide basic services to poor people by increasing their capacity for self-help, by increasing the fiscal year 1975 authorization from \$291,000,000 to \$546,300,000. This authorization level will permit the Executive Branch to conduct the overall bilateral development assistance program at budget request levels. The overall program reflects a substantial increase in emphasis on the food and nutrition sector.

##### *Chapter 2—Housing guaranties*

Section 6. Extension of Housing Guaranty Authority.—This section amends section 223(i) of the Act by extending the termination date of the housing guaranty authority from June 30, 1975 to June 30, 1976.

##### *Chapter 3—International organizations and programs*

Section 7. Authorization.—This section increases the authorization for International Organizations and Programs under section 302(a) of the Act from \$150,000,000 to \$153,900,000 for fiscal year 1975.

##### *Part II*

##### *Chapter 2—Military assistance*

Section 8(a) (1). Authorization.—This section amends section 504(a) of the Act by authorizing \$985,000,000 for military assistance for fiscal year 1975. This authorization includes funds for military assistance in the Middle East and also reflects the transfer of military assistance to Laos from the Department of Defense (MASF) budget to the military assistance program under the Act. This transfer is required by section 513 of the Act, as amended by Public Law 93-189.

Section 8(a) (2). Special Authority.—This section amends section 506(a) by extending the President's special authority to draw down DOD stocks and services for the military assistance program through fiscal year 1975 and such additional period as may precede the enactment of subsequent military assistance authorizing legislation. The provision for extending this authority for an additional period beyond the end of fiscal year 1975 is to prevent the lapse of the President's ability to meet unforeseen emer-

gency needs, while leaving full discretion to the Congress in deciding whether to renew the authority in its consideration of subsequent military assistance authorizing legislation.

##### *Section 8(a) (3). Excess Defense Articles.*

This section adds a new section 507 to the Act, imposing a ceiling of \$150,000,000 upon the aggregate value of defense articles ordered for the military assistance program during fiscal year 1975. The new section 507 is intended to provide a simplified substitute for section 8 of Public Law 91-672, which requires a charge to the MAP appropriation for excess defense articles granted to foreign countries by all federal agencies (other than the Agency for International Development) from sources within the United States or, if generated abroad, in an aggregate value exceeding \$150,000,000 in a fiscal year. The complexities of the present law have created extraordinary property accountability problems for all federal agencies and have resulted in such anomalies as charges to the MAP appropriation for excess defense articles granted to South Vietnam under the separate Department of Defense funded MASF program. The requirements in present law for reports to the Congress are retained.

##### *Section 8(b). Assistance to Cambodia*

This section provides explicitly that section 655(c) of the Act, which prohibits assistance to Cambodia not specifically authorized by law, shall not apply during fiscal year 1975. Authorizations clearly contemplating assistance to Cambodia in fiscal year 1975 would seem either to satisfy or supersede the requirements of section 655(c). Nevertheless, this section, which is similar to section 12(c) of the Foreign Assistance Act of 1973 (Public Law 93-189), is intended to eliminate any doubt.

##### *Section 8(c). Statute Repealed*

This section repeals section 8 of Public Law 91-672, which establishes accounting procedures, requirements for charges to the MAP appropriation, and reporting requirements with respect to excess defense articles. This repealed provision of law is replaced by the new section 507 of the Act added by section 8(a) (3) of the Bill.

##### *Chapter 4—Security supporting assistance*

Section 9. Authorization.—This section amends section 532 of the Act to authorize \$385,500,000 for Security Supporting Assistance activities. This authorization includes funds for the important Middle East programs described in Title I of the Bill.

#### *Title IV. Foreign military sales act amendments*

Section 10(a) (1). Conditions of Eligibility.—This section clarifies an ambiguous provision in section 3(d) of the FMSA regarding the ineligibility for further sales, credits and guaranties of countries that violate foreign military sales agreements. It makes clear that corrective action by a country that has violated an applicable agreement can restore its eligibility for sales, credits and guaranties not only of sophisticated weapons, but of other defense articles and defense services as well.

Section 10(a) (2). Federal Financing Bank.—This section amends section 24(a) and section 24(b) of the FMSA by authorizing foreign military sales guaranties to be issued to the Federal Financing Bank, which was established by the Federal Financing Bank Act of 1973, P.L. 93-224, approved on December 29, 1973 (87 Stat. 937), and by authorizing the sale to the Bank of promissory notes issued by borrowers pursuant to direct foreign military sales credits. The Federal Financing Bank is an instrumentality of the United States Government and, as such, is subject to the parenthetical clause in subsections (a) and (b), although section 6 of the Federal Financing Bank Act of 1973

authorizes the Bank to purchase any obligation sold, or guaranteed by a Federal agency. Purchases by the Bank under section 6 are required to be upon such terms and conditions as to yield a return at a rate not less than a rate equivalent to cost of money to the U.S. Government (or, whenever the Bank's own obligations outstanding are sufficient, to cost of money to the Bank), and the Bank is also authorized to charge a normal commitment fee in connection with such purchase. Any guaranty transactions with the Bank under the FMSA will be subject to the same reserve requirements under section 24(c) and controlled by the same aggregate ceiling under section 31(b) as guaranty transactions with private U.S. lenders will continue to be. It is expected that the participation of the Bank will (1) result in savings in financing costs to the Government as well as to guaranteed borrowers and (2) provide an additional means of financing the foreign military sales guaranty program.

Section 10(a) (3). Guaranties.—This section amends section 24(c) of the FMSA by reducing the requirement for obligation of funds in connection with foreign military sales guaranties from 25 per cent of the principal amount of contractual liability to 10 per cent of that principal amount, effective July 1, 1974. Funds obligated under section 24(c) are set aside as a reserve against claims due to defaults by foreign countries on private loans guaranteed by the United States. The absence of any defaults since the enactment of the FMSA in 1968 has demonstrated that a 25 per cent reserve requirement is unnecessarily high. In addition, it provides for retention in the reserve account of all funds not in excess of the principal amount of all outstanding guaranties.

Section 10(a) (4). Authorization and Aggregate Ceiling.—This section amends section 31 of the FMSA to authorize \$555,000,000 for fiscal year 1975 to carry out the purposes of the FMSA and establishes a ceiling of \$872,500,000 for fiscal year 1975 on the aggregate of credits and the principal amount of loans guaranteed. Section 2 of the Bill indicates our intention to provide \$330,000,000 of the aggregate ceiling for Israel and Jordan.

Section 10(a) (5). Regional Ceilings.—This section repeals the ceiling contained in section 33(a) of the FMSA of \$150,000,000 (excluding training) in military assistance, FMS credits and guaranties and vessel transfers to Latin America. This change is not proposed in order to expand significantly military sales to countries in Latin America. Rather, it is a part of our effort to establish a new, more mature relationship with the nations of the Hemisphere. This section retains the existing ceiling of \$40,000,000 on assistance and sales to African countries, but would restore the President's authority to waive this limitation as originally contained in the FMSA. This waiver authority applies only when determined by the President to be important to the security of the United States. Each such determination must be reported to the Congress.

Section 10(b). Technical Amendment.—This section anticipates that obligations may be incurred in fiscal year 1975 for guaranties under section 24(c) of the FMSA prior to the amendment of that section by section 10(a) (3) of the Bill. In such case, it authorizes adjustments to accounts to reflect obligations for the reserve fund at a consistent rate of 10 per cent of the principal amount of contractual liability for the entire fiscal year 1975.

By Mr. ROBERT C. BYRD (for Mr. BENTSEN):

S. 3395. A bill to reorganize the Department of Justice, to require nonpartisan appointments to policymaking posi-

April 29, 1974

tions in such Department, and for other purposes. Referred to the Committee on the Judiciary.

Mr. ROBERT C. BYRD, Mr. President, on behalf of the distinguished Senator from Texas (Mr. BENTSEN), I introduce a bill entitled "The Justice Department Reform Act."

I ask unanimous consent that a statement prepared by Senator BENTSEN, together with the text of the bill, be printed at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR LLOYD BENTSEN IN BEHALF OF THE DEPARTMENT OF JUSTICE REFORM ACT OF 1974

Mr. BENTSEN. Mr. President, I am deeply concerned about the American people's loss of confidence in the Department of Justice. I believe that loss of confidence is due in large measure to the politicization of legal posts within the Department. The time has come to end what seems to have become the nearly standard practice of Presidents appointing as Attorney General one of the principal leaders of the political campaign in which they were elected. The time has also come to remove the U.S. Attorneys' offices from the patronage system.

John Mitchell, Robert Kennedy, and J. Howard McGrath, Attorney General under Truman, are the most obvious examples of men who managed the successful Presidential campaigns and who immediately after the election, were appointed to head the Justice Department. Unfortunately, the practice has been working its way into our political system for much longer than these relatively recent appointments. A Mitchell Palmer, Attorney General under Woodrow Wilson, had been the President's floor manager at the 1912 Democratic Convention. Frank Murphy, Attorney General under Franklin Roosevelt, served as leader of the Roosevelt forces in the State of Michigan. President Eisenhower's Attorney General, Herbert Brownell had not only been active in his campaign but had served as campaign manager for Republican Presidential candidate Thomas E. Dewey in both 1944 and 1948. Several of these men after appointment continued to serve as political advisers to the President, as well as his legal counsel. By historical tradition, and with certain exceptions, the top Presidential appointees in the the headquarters of the Department of Justice have been highly respected representatives of the legal profession. But where they have also been major campaign officials for the President their appointment only contributes to a growing perception of the Justice Department as a political instrument. With all of the highly competent members of the legal profession to choose from, it's simply not necessary to look to the ranks of the campaign staff for Justice Department personnel.

The conduct of some of the recent officials of the Department is too fresh in the mind of the public and too deeply etched on the minds of the bar to be passed off with a bromide that, "The next President won't let it happen."

It is time to assure the American people that law enforcement decisions will not be determined by partisan politics—either Democratic or Republican. It's time to get a little closer to the statement of President Lincoln's Attorney General, Elward Bates, when he said,

"The office I hold is not properly political, but strictly legal; and it is my duty, above all other ministers of state to uphold the

law and to resist all encroachments, from whatever quarter, of more will and power."

In an effort to restore that spirit, I am, today, introducing legislation, which I believe will be a major step to effectively deal with the politicization of government legal posts within the Department of Justice. My bill is directed at insuring the Department's capacity to administer justice evenly and at restoring the public's perception of the quality and impartiality of the Justice that is administered. Specifically, my bill will do the following:

First, it will statutorily prohibit the President from appointing as Attorney General, Deputy Attorney General, the Solicitor General or Assistant Attorney General, a person who held a paid or unpaid position in the election campaign in which he was elected. This prohibition includes the National and State party organizations at the time of his election.

Second, it will amend the Hatch Act, which prohibits partisan political activities, to encompass within its purview, all personnel in the Department of Justice, including the Attorney General, his Deputy, the Solicitor General, and all of the U.S. Attorneys.

Third, the bill provides for the appointment of U.S. Attorneys and U.S. Marshals by the Attorney General. Such appointments would continue to be for four year terms, subject to Senate confirmation and reconfirmation after four years in the event of reappointment. Thirty years ago the Collectors of the Internal Revenue, the Postmasters and the United States Attorneys were the backbone of the patronage system. Today, only the Presidentially appointed U.S. Attorney remains. It's time that these positions were filled on the basis of ability to effectively enforce the Nation's laws rather than as rewards for backing a successful Presidential candidate.

Fourth, the bill provides that all assistant U.S. Attorneys and their legal staffs become part of the career service already effectively established within the headquarters of the Department of Justice.

The President must retain authority to carry out his responsibilities of seeing that our laws are enforced and my bill would not alter or inhibit that authority. But, the partisan orientation in recent years of those responsible for supervising the Nation's legal affairs seems extreme. If Justice is to be impartial it must for starters be non-partisan.

The Department of Justice should not be run or even give the appearance of being run by people who march to a drum beat emanating from the political advisers of any President or his party. We must move now to restore the American people's confidence that their laws are being enforced impartially and without regard to political affiliation. Decisions as to whether cases are prosecuted or dismissed, whether appeals are taken or settled, must not depend upon the political influence of the litigant. Even the appearance of impropriety undermines the American people's faith in our system.

I believe that the Congress has a responsibility to act now to restore that lost confidence. The enactment of this legislation would move us forcefully in that direction.

S. 3395

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Justice Department Reform Act".

APPOINTMENT OF OFFICERS

SEC. 2. (a) Chapter 31 of title 28, United States Code, is amended by inserting after section 506 the following new section:

"§ 506A. Qualifications

"Any individual who—

(1) whether paid or unpaid, held a position of trust and responsibility to an individual who was elected to the office of President while serving (A) on the personal campaign staff of such individual, or (B) on an organization working on such individual's campaign, or

(2) held a State-wide or national office or was employed by a State or national political party, respectively, that campaigned for an individual who was elected to the office of President,

shall be ineligible for appointment to any position under sections 503-506 of this title if the appointing authority is the President for whom such individual campaigned."

(b) The analysis of chapter 31 of such title is amended by inserting immediately below item 506 the following new item:

"501A. Qualifications."

APPOINTMENT OF UNITED STATES ATTORNEYS AND UNITED STATES MARSHALS

SEC. 3. (a) Section 541 of such title is amended by striking out "President" in subsections (a) and (c) and inserting in lieu thereof "Attorney General".

(b) Section 561 of such title is amended by striking out "President" in subsections (a) and (b) and inserting in lieu thereof "Attorney General".

(c) Section 27 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1617) is amended by striking out "President" and inserting in lieu thereof "Attorney General".

APPOINTMENT OF ASSISTANT UNITED STATES ATTORNEYS

SEC. 4. Section 542 of such title is amended to read as follows:

"§ 542. Assistant United States Attorneys.

"(a) The Attorney General may appoint assistant United States attorneys, and may assign such attorneys to assist any United States attorney the Attorney General considers appropriate.

"(b) Each assistant United States attorney is subject to removal by the Attorney General."

POLITICAL ACTIVITY

SEC. 5. Section 7324 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) Notwithstanding the provisions of subsection (d) of this section, subsection (a) (2) of this section applies to all officers and employees of the Department of Justice."

EFFECTIVE DATE; INITIAL APPOINTMENT OF OFFICERS

SEC. 6. (a) This Act, and amendments made by this Act, other than this section, shall take effect 90 days after the enactment of this Act.

(b) Notwithstanding subsection (a) of this section, any vacancy in any office affected by this Act may be filled in the manner provided by this Act at any time after the date of enactment of this Act.

(c) The provisions of this Act shall not apply to any individual holding an office affected by any amendment made by this Act if such individual would be eligible for appointment to such office after the provisions of this Act become effective.

By Mr. BUCKLEY:

S. 3396. A bill to amend the Internal Revenue Code of 1954 and certain other provisions of law to provide for automatic cost-of-living adjustments in the in-